

Sheet Metal Workers International Association, Local Union No. 13, AFL-CIO, and its successor, Sheet Metal Workers International Association Local Union No. 28 (Sheet Metal Contractors Association, Hudson & Bergen Counties, New Jersey)¹ and Paul Mirable. Case 22-CB-4378

January 28, 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On November 23, 1981, the Board issued a Decision and Order in this proceeding,² in which it ordered, *inter alia*, Respondent Local 13 to make Paul Mirable whole by paying him the amount of wages he lost by reason of Respondent Local 13's discrimination against him which was found to be in violation of Section 8(b)(1)(A) and (2) of the Act.

Because of a dispute over the amount of backpay due under the terms of the Board's Order, the Acting Regional Director for Region 22, on May 28, 1982, issued a backpay specification and notice of hearing alleging, *inter alia*, that Respondent Local 28 is the successor to Respondent Local 13 for the purpose of remedying the unfair labor practices committed by Respondent Local 13. On June 10, 1982, Respondent filed an answer which generally denied the allegations of the backpay specification.³ By letter dated July 1, 1982, the General Counsel notified Respondent that the answer it submitted in response to the backpay specification did not comply with Section 102.54 of the Board's Rules and Regulations. Respondent was given until July 8, 1982, to file an amended answer. By telegram dated July 8, 1982, Respondent requested an extension of time to file an amended answer. Respondent was informed by the General Counsel telephonically that its request had been granted and that its amended answer should be received by July 13, 1982. No amended answer was ever received from Respondent.

On August 13, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment

should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in the case, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(b) and (c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, states:

(b) *Contents of the answer to specification.*—

The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegations of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall

¹ Herein individually referred to as Respondent Local 13 and Respondent Local 28, respectively, and collectively referred to as Respondent.

² 259 NLRB 374.

³ Although not entirely clear, it appears that the same attorney is representing both Respondent Local 13 and Respondent Local 28, and filed the answer on behalf of both.

be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The backpay specification duly served on Respondent states that, pursuant to Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, "Respondent shall within 15 days from the date of this Specification file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of an Answer to this Specification. To the extent that such answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegation[s] shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them."

In his memorandum in support of the Motion for Summary Judgment, counsel for the General Counsel submits that Respondent's answer fails to comply with the requirements of Section 102.54(b) and (c) of the Board's Rules and Regulations as to specificity. Therefore, counsel for the General Counsel requests that the Board deem the allegations of the backpay specification to be true and admitted without the need for the taking of evidence.

A copy of the answer filed by Respondent is attached to the Motion for Summary Judgment as an exhibit. This answer simply denies all of the allegations contained in the backpay specification.

We agree with counsel for the General Counsel that the answer of Respondent Local 13 constitutes a general denial, which fails to comply with the requirements of Section 102.54(b) and (c) as to those compliance matters within its knowledge. Thus, the answer does not dispute the accuracy of the gross backpay figures contained in the specification or provide any alternative formula for computing the amounts of gross backpay owed. The answer does not state that Respondent Local 13 is without knowledge as to the wages and hours of Mirable, nor does the answer contain any explanation for the failure to deny specifically the gross backpay allegations, as required by Section 102.54(c). Since Respondent Local 13 has failed to deny specifically the gross backpay allegations or to explain adequately its failure to do so, Section 102.54(c) requires that these allegations be deemed to be admitted and true. Accordingly, we find them to be correct.

However, as we have held that a general denial of the allegations concerning the interim earnings in a backpay specification is sufficient under Section 102.54 to raise an issue warranting a hearing,⁴ we shall order a hearing to determine the net interim earnings of Paul Mirable.

Further, we shall order a hearing on the issue of whether Respondent Local 28 is a successor to Respondent Local 13 and is obligated to remedy Respondent Local 13's unfair labor practices. Under the Board's *Perma Vinyl* doctrine,⁵ "one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct." In *Cement League*,⁶ this principle was found to be applicable in a union successorship context. However, in *Perma Vinyl*, the Board specifically stated:

Of course, no such adjudication of liability can be made without affording the bona fide purchaser a full opportunity at a hearing, after adequate notice, to present evidence on the question of whether it is a successor which is responsible for remedying a predecessor's unfair labor practices. The successor would also be entitled, of course, to be heard against the enforcement of any order issued against it.⁷

Inasmuch as Respondent Local 28 was not made a party to the underlying unfair labor practice proceeding herein, and thus has never had the opportunity to present evidence at a hearing as to its liability, we find that the general denial of the allegation in the backpay specification regarding its status as successor is sufficient to require a hearing.⁸

Accordingly, we shall deny counsel for the General Counsel's Motion for Summary Judgment, and we shall order a hearing limited to the determination of the net interim earnings of Paul Mirable and to the issue of whether Respondent Local 28 is a successor responsible for remedying Respondent Local 13's unfair labor practices. However, since we have found that the general denial of Respond-

⁴ *Dews Construction Corp., a subsidiary of The Aspin Group, Inc.*, 246 NLRB 945 (1979).

⁵ *Perma Vinyl Corporation, et al.*, 164 NLRB 968, 969 (1967), *enfd. sub nom. United States Pipe and Foundry Company v. N.L.R.B.*, 398 F.2d 544 (5th Cir. 1968), approved by the Supreme Court in *Golden State Bottling Co., Inc., formerly Pepsi-Cola Bottling Co. of Sacramento, et al. v. N.L.R.B.*, 414 U.S. 168 (1973).

⁶ *Local Union No. 46 Metallic Lathers and Reinforcing Iron Workers (Cement League)*, 259 NLRB 70 (1981).

⁷ *Perma Vinyl, supra* at 969, quoted in *Golden State, supra* at 180.

⁸ See *Dews Construction Corp., supra* at 946.

ent Local 13 as to all other allegations in the backpay specification is insufficient under Section 102.54(b) and (c) of the Board's Rules and Regulations, and as no explanation or response to the Notice To Show Cause has been filed, we deem Respondent Local 13 to have admitted all other allegations in the backpay specification to be true.

ORDER

It is hereby ordered that the General Counsel's Motion for Summary Judgment be, and it hereby is, denied.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 22 for the purpose of issuing a

notice of hearing and scheduling a hearing before an administrative law judge, which hearing shall be limited to taking evidence as to the amount of net interim earnings of Paul Mirable, and as to the liability of Sheet Metal Workers International Association Local Union No. 28.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision, containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall apply.